

REMARKS

The Examiner rejected claims 20-37, 39, 40 and 43-47 under 35 U.S.C. § 103(a) as being unpatentable and obvious over United States Patent 5,970,143 ("Schneier et al.") in view of United States Patent 6,001,065 ("DeVito"). The applicants respectfully traverse the rejection.

However, in an effort to expedite the prosecution of the present application, applicants have amended independent claims 20, 34 and 43 to specifically recite that the biometric input or information received by the system is variable biometric input or information. Examples of variable biometric input or information can be found at page 7, lines 6-28, and include heart rate, blood pressure, temperature, brain waves, blood oxygen levels, respiratory rates, etc. The subject claims have also been amended to specifically recite that the system, whether the server or an event engine, transmits to at least one player a requested change in the variable biometric information. One of several examples of this "request" can be found at page 8, lines 8-10, where a particular task of the game is to cause a hot air balloon to rise by decreasing the player's stress level, as measured by EDR. The subject claims then require the system to use the changes in the variable biometric information to generate the event sequence. In the previously cited example, the change in EDR readings (the player's stress level), the hot air balloon rises.

The Schneier et al. and DeVito references both fail to teach or otherwise disclose each and every limitation of claims 20, 34 or 43. To be sure, Schneier et al. disclose the use of fixed biometric data, such as finger prints, retinal imaging, etc., not variable biometric information. The reason for this is simple. Schneier et al. need the information for identification purposes, which dictates that the information be fixed and not variable. Moreover, neither reference teach or otherwise disclose that their systems request changes in the biometric information, such as requiring the players to become more calm, more agitated, produce a higher heart rate, etc. While the DeVito system may make future selections based on biometric information, it does not make specific change requests or demands of its users. In this manner, the present gaming system teaches its users how to regulate their physiological state (page 4, lines 1-8). Prior art

systems are not concerned with such matters, let alone provide the teachings that would lead one of skill in the art to develop such a system. Accordingly the combination of the cited references cannot render the subject claims obvious. Such an obviousness-type rejection fails to consider the claimed invention or the prior art as a whole.

In determining the difference between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A prior art reference and the claimed invention must be considered in their entireties. Distilling an invention down to the "jist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *Cert. denied*, 469 U.S. 851 (1984). A system that requests particular changes in biometric readings it is receiving from its users, and then generates multimedia events in response to the resulting changes in biometric information received is clearly unique to the art. No suggestion or motivation can be found within the art for such a system. Accordingly, claims 20, 34 and 43 should be allowed.

The remaining claims depend directly or indirectly from claims 20, 34, and 43 and, at least by virtue of the dependency, are patentably distinct from Schneider et al. and DeVito either alone or in any reasonable combination thereof. Accordingly, withdrawal of the rejection and allowance of claims 20-37, 39, 40 and 43-47 is respectfully requested.

If an extension of time under 35 C.F.R. § 1.136 is required to obtain entry of this Amendment, such an extension is requested. If there are fees due under 37 U.S.C. §§ 1.16 or 1.17 which are not otherwise accounted for, please charge our Deposit Account No. 08-2623.

August 23, 2007



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